

DISMISS and Opinion Filed October 25, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-21-00757-CV

**JOHNATHAN COOPER, Appellant
V.
MICHAEL MOWLA, Appellee**

**On Appeal from the 192nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-17693**

MEMORANDUM OPINION

Before Justices Molberg, Nowell, and Goldstein
Opinion by Justice Goldstein

This appeal from the trial court's March 30, 2021 order granting appellee's motion for dismissal under Texas Rule of Civil Procedure 91a was filed as a restricted appeal on August 31, 2021. *See* TEX. R. APP. P. 26.1(c), 30 (both concerning restricted appeals); TEX. R. CIV. P. 91a (concerning baseless causes of action). After reviewing the clerk's record, we questioned our jurisdiction over the appeal as the dismissal order did not address appellee's request, in the motion to dismiss, for attorney's fees and it appeared the appeal had been prematurely filed. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001) (subject to mostly

statutory exceptions, appeal may be taken only from final judgment that disposes of all parties and claims).

At our request, the parties filed letter briefs addressing our concern. Both parties note that on September 17, 2021, appellee filed in the trial court a “waiver of right to attorney’s fees effective March 30, 2021.” The waiver asserted that “[w]hen the Court signed the March 30, 2021 Order, [appellee] chose to **not** pursue his right to request attorney’s fees. [Appellee] waived this right as of March 30, 2021.” (emphasis in original) Appellant questions the veracity of the waiver in his letter brief, but appellee maintains that as a result of the waiver, the dismissal order is final and appealable.

We note appellee’s Rule 91a motion for dismissal was heard by submission and stated, with regard to attorney’s fees, that “[u]pon the granting of this motion, [appellee] requests a hearing so that he may present evidence of his costs and fees necessary to defend against [appellant’s] frivolous claims.” Although appellee asserts he waived his right to fees as of March 30, nothing in the trial court’s docket sheet or elsewhere in the clerk’s record reflects the trial court was aware, at the time it signed the dismissal order, that appellee waived his right to fees such that the order is final. And nothing before us reflects that, since the filing of the waiver on September 17, a final order has been signed.

Based on the record before us, we conclude the appeal was filed prematurely. Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Bonnie Lee Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

210757F.P05



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JOHNATHAN COOPER, Appellant

No. 05-21-00757-CV V.

MICHAEL MOWLA, Appellee

On Appeal from the 192nd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DC-20-17693.

Opinion delivered by Justice
Goldstein, Justices Molberg and
Nowell participating.

In accordance with this Court's opinion of this date, we **DISMISS** the appeal.

Judgment entered October 25, 2021.